

September 7, 2006

Mr. Daniel L. Schwarz
Chief Deputy Yellowstone County Attorney
217 North 27th Street
P.O. Box 35025
Billings, MT 59102-5025

Re: Recordation requirements for a document canceling a recorded notice of trustee sale

Dear Mr. Schwarz:

You have asked for an advisory letter on a question that I have restated as follows:

Must an instrument that cancels a recorded notice of a trustee sale and meets all of the statutory requirements of Mont. Code Ann. 71-1-312 (5) be recorded by the County Clerk and Recorder if the document fails to contain a legal description of the affected property?

I have concluded that the cancellation document must be recorded even in the absence of a legal description of the affected property as long as the document meets the statutory requirements listed in Mont. Code Ann. 71-1-312. The following sets forth the basis for this conclusion.

Your letter focused on whether or not the cancellation document constituted a “conveyance” of real property. But this question is not dispositive of the issue because another statute specifically addresses the discontinuance of foreclosure proceedings. Mont. Code Ann § 71-1-312(5) provides a specific list of recordation requirements for an instrument of cancellation. “A cancellation of a recorded notice of sale shall, when executed and acknowledged, be entitled to be recorded and shall be sufficient if it sets forth a reference to the trust indenture and the book and page where the same is recorded, a reference to the notice of sale and to the book and page where the same is recorded, and a statement that such notice of sale is canceled.” The document must reference the trust indenture and the notice of sale. Each of these instruments will contain a full legal description of the property. But the statute does not require the cancellation document to include a “description of the property” before it is “entitled” to be recorded as required in the general recordation statute.

Montana follows the prevailing rule when interpreting statutes that are in conflict. “When two statutes deal with a subject, one in general and comprehensive terms, and the other in minute and more definite terms, the more definite statute will prevail to the extent of any conflict between them.” Montana v Feight, 2001 MT 205, ¶ 21, 306 Mont. 312, 33 P.3d 623. This statement of principle is consistent with our code: “When a general and particular provision are inconsistent, the latter is paramount to the former, so a particular intent will control a general one that is inconsistent with it.” Mont. Code Ann. § 1-2-102. Moreover, in construing statutes, “[a]n interpretation which gives effect is preferred to one which makes void.” Mont. Code Ann. § 1-3-232.

Mont. Code Ann. § 7-4-2636 is a general recordation statute that conflicts with the particular recordation requirements of Mont. Code Ann. § 71-1-312(5). The conflict must be resolved in favor of the particular statute. This is especially true since a contrary interpretation would nullify the provision of Mont. Code Ann. § 71-1-312(5) stating that an instrument meeting the requirements of that subsection “shall . . . be entitled to be recorded.”

Accordingly, a cancellation instrument that meets the requirements of Mont. Code Ann. § 71-1-312(5) must be recorded even though it does not include a description of the affected property.

Yours truly,

JON ELLINGSON
Assistant Attorney General

je/jym